

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

GABRIEL L. LOWE, : NO. 1:13-CV-00061  
: :  
Petitioner, : ORDER  
v. : :  
: :  
WARDEN, CHILLICOTHE : :  
CORRECTIONAL INSTITUTION, : :  
: :  
Respondent. : :

This matter is before the Court on the Magistrate Judge's April 7, 2014 Report and Recommendation (doc. 12). No Objection has been filed.

Proper notice was provided to the Parties under Title 28 U.S.C. § 636(b)(1)(C), including the notice that they would waive further appeal if they failed to file an objection to the Magistrate Judge's Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947, 949-50 (6<sup>th</sup> Cir. 1981).

Having reviewed this matter de novo, pursuant to Title 28 U.S.C. § 636, the Court concludes the Magistrate Judge's Report and Recommendation is correct that Petitioner's first ground for relief is procedurally defaulted, and his second ground for relief should be denied as his conviction was based on sufficient evidence that his driving behaviors were reckless.

Accordingly, the Court ADOPTS and AFFIRMS the Report and Recommendation in all respects (doc. 12), and DISMISSES

Petitioner's Petition for a Writ of Habeas Corpus (doc. 1) with prejudice. The Court further FINDS that a certificate of appealability should not issue with respect to either of the claims for relief alleged in the Petition, which this Court has concluded are barred from review because under the first prong of the applicable two-part standard "jurists of reason would not find it debatable whether this Court is correct in its procedural ruling."

Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). Finally, the Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that with respect to any application by Petitioner to proceed on appeal in forma pauperis, an appeal of this Order would not be taken in "good faith" and therefore the Court DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

SO ORDERED.

Dated: May 1, 2014

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge